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IN THE  
**Supreme Court of the United States**

October Term, 1962

No. **464**

UNITED STATES OF AMERICA,

*Petitioner,*

*v.*

CARLOS MUNIZ.

*Respondent.*

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**BRIEF FOR RESPONDENT CARLOS MUNIZ ON  
PETITION FOR WRIT OF CERTIORARI**

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FRIEDMAN, FRIEDMAN & FRIEDMAN,  
*Attorneys for Respondent,*  
*Carlos Muniz,*

497 East 161st Street,  
New York 51, N. Y.

CHARLES ANDREWS ELLIS, *Counsel.*  
42 Broadway,  
New York 4, N. Y.

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Pursuant to Rules 24 and 40, respondent Carlos Muniz files this brief in opposition. Certain features of the Petition are inaccurate:

1. Under "Statement", p. 2 of the Petition, it is recited that Muniz was assaulted by fellow inmates "During a riot". While the dissenting opinions of Judge Kaufman (Petition, pp. 27, 69-70) use the words "during a prison riot", "rioting prisoners" and "riot", the papers in the case contain no such allegation.

2. As "Statute Involved", pp. 2 and 11 of the Petition, only §§1346(b) and 2674 of 28 U. S. C. are referred

to and printed as the "pertinent provisions" and "pertinent parts" of the Federal Tort Claims Act.

There are also applicable, however, not only other provisions of the Tort Claims Act, but other statutes as well.

Of the Tort Claims Act, there are pertinent the provisions of 28 U. S. C. §2676 barring actions against an employee of the Government; the exclusiveness of remedy provisions of §2676, and the exceptions provisions of §2680. These are referred to in the opinions below (Petition, pp. 38, 43, 54, 86).

Of particular and special importance also are the provisions of 18 U. S. C. §4042 specifying "Duties of Bureau of Prisons". (Referred to in opinion below, Petition, p. 37).

Proper consideration and contrast of *Feres v. United States*, 340 U. S. 135 and *United States v. Brown*, 348 U. S. 110, cited in the Petition, will also involve provisions of the General Military Law, 10 U. S. C. §§1-1221 (referred to in opinion below, Petition, p. 38), and other statutory provisions in 16 U. S. C. §457, 18 U. S. C. §§7(3), 13, 113(c), 1793, 4208(a)(2), and other statutes (See opinion below, Petition, pp. 49, 50).

3. The cases cited on p. 6 of the Petition all make much of the provision as respects the law of the place, invariably assuming that this must mean state law as such, as distinct from Federal law which controls the relation of the Government and the prisoner. This, however, overlooks the reality of enclave laws. Federal enclaves are lands respecting which "Congress has the combined powers of a general and State Government" (*Pacific Coast Dairy v. Department of Agriculture*, 318 U. S. 285, 294;

*Stouterburgh v. Hennick*, 129 U. S. 141, 147; *United States v. Sharpnack*, 355 U. S. 286; *Stokes v. Adair*, 4 Cir., 265 F. 2d 662, cert. denied 361 U. S. 816). Under consistent Congressional policy, laws of the State not inconsistent with Federal law, are made laws of the enclave; but thereby they lose their character as laws of the State and become Federal laws of the enclave (*Stokes v. Adair, supra*). It is enclave law, therefore, which applies to prisons as Federal enclaves.

In *James v. United States*, 8 Cir., 280 F. 2, 428 (Petition, p. 6) the action and appeal were *pro se* and dismissed as frivolous. In *Lack v. United States*, 8 Cir., 262 U. S. 167, the action was for negligence "in failing to provide him with a safe place to work, and in failing to instruct or warn him as to the dangerous nature of the work". It points out that compensation was provided. *Jones v. United States*, 7 Cir., 249 U. S. 864, relies on the theory of Federal rather than State law applying (thus ignoring the enclave principle). *Bernian v. United States*, E. D. N. Y., 170 F. Supp. 107, states that the injured prisoner was entitled to workmen's compensation. Similar also is *Van Zuch v. United States*, E. D. N. Y., 118 F. Supp. 468, and also holds on the merits that there was a failure to show negligence. *Shew v. United States*, M. D. N. C., 116 F. Supp. 1, also held that the proof did not establish negligence. *Signon v. United States*, W. D. Va., 110 F. Supp. 906, held that workmen's compensation was provided for the injury.

The cases cited on p. 8 of the Petition hold that the Court may not by habeas corpus, mandamus or injunction supervise the discipline of prisoners. No such question is involved here.

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As respects conflict of decisions, therefore, the case is primarily one of conflict between the 2-1 and 5-4 opinions herein themselves; and it is submitted that the case is not one requiring the issuance of a writ of certiorari.

Respectfully submitted,

FRIEDMAN, FRIEDMAN & FRIEDMAN, :

*Attorneys for Respondent,*

*Carlos Muniz,*

497 East 161st Street,

New York 51, N. Y.

CHARLES ANDREWS ELLIS, *Counsel,*

42 Broadway,

New York 4, N. Y.

Dated October 25, 1962.